

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Summit Housing Partners, LLC

FHFC Case No.: 2010-004VW

**ORDER DENYING PETITION FOR EMERGENCY
WAIVER OF CERTAIN SET-ASIDE REQUIREMENTS
CONTAINED IN APPLICATION INSTRUCTIONS
ADOPTED BY RULE 67-21.003**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on February 26, 2010, pursuant to a “Petition for Emergency Waiver of Certain Set-Aside Requirements Contained in Application Instructions Adopted by Rule 67-21.003” (“Emergency Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Emergency Petition on February 15, 2010, from Summit Housing Partners, LLC (“the Petitioner”). On February 26, 2010, the Notice of the Emergency Petition was published in Volume 36, Number 8, of the Florida Administrative Weekly¹. Florida Housing received no comments regarding the Emergency Petition. After careful review of the

¹ Pursuant to R. 28-104.005(2), Fla. Admin. Code, on February 16, 2010, Florida Housing gave notice of the receipt of the petition on its website.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell DATE: 2/26/10

record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. During the 2009 Multifamily Mortgage Revenue Bond ("MMRB") Supplemental Bond Cycle, Petitioner applied for an award of \$7,600,000.00 in Tax-Exempt, Private Activity bonds to construct Oak Pointe Apartments (the "Development") in Leon County, Florida. Petitioner's Application was #2009A-215B.

3. On December 4, 2009, the Board approved the award of \$7,600,000.00 of Tax-Exempt, Private Activity bond allocation to Petitioner subject to further approvals and verifications by the Credit Underwriter, Bond Counsel, Special Counsel and the appropriate Florida Housing staff. During the credit underwriting process, it was discovered that the Development is located within the Set-Aside Location A area of Leon County, Florida.

4. Petitioner requests a waiver of the Rule requiring that Developments within a Set-Aside Location A area commit to Set-Aside at least 85% of the Development's residential units at 50% AMI or less and a waiver of the Rule requiring it must meet the minimum ELI Set-Aside

threshold set in the Instructions.² Petitioner states that it will not be able to offer the rental units as affordable housing if it is required to comply with these requirements.

5. Petitioner stated as a basis for requesting an emergency waiver of the Rules, that the contract for the purchase of the Development expires on March 10, 2010, and that it is concerned that it will not be able to feasibly extend the contract for the time necessary to allow its request to be considered at the April 30, 2010 Board meeting.

6. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

7. Section 120.542(3), Florida Statutes, provides that the Governor and Cabinet, sitting as the Administration Commission shall adopt uniform rules of procedure for granting or denying emergency waivers.

² Part III E.1.b.(1)(b) of the Application Instructions state: Applicants with a Set-Aside Location A Development must meet the following set-aside requirements: Applicants requesting MMRB must commit to set aside at least 85% of the Development's residential units at 50 percent AMI or less. Part III E.1.b.(1)(c) of the Application Instructions state: Applicants with a Set-Aside Location A Development must meet the following set-aside requirements: All Applicants must meet the minimum ELI Set-Aside Threshold set out at Part III.E.1.b(2)(a)(iii) of these instructions.

Under Rules 28-104.005(1), (2), and (3), Fla. Admin. Code, it provides in part:

- (1)The agency shall grant or deny a petition for emergency variance or waiver within 30 days of its receipt by the agency.
- (2)...Interested persons...may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein...
- (3)If the agency decides that the situation is not an emergency, the petition shall then be reviewed by the agency on a non-emergency basis...

8. Florida Housing finds that the situation as presented in the Petition is not an emergency. Petitioner's expiration date for the contract for purchase was not created or aggravated by Florida Housing's rules and does not warrant expedited attention by the Board or an abbreviated time period for public comment. Delays in closing and accompanying extensions of purchase and sale contracts are not uncommon in transactions of this nature. A telephonic Board meeting is scheduled for March 17, 2010. The merits of the Petition can be addressed at the Board's next meeting.

IT IS THEREFORE ORDERED:


The "Petition for Emergency Waiver of Certain Set-Aside Requirements Contained in Application Instructions Adopted by Rule 67-21.003," as a Petition for Emergency Waiver is hereby **DENIED** as the

situation is not an emergency. The merits of the Petition shall be adjudicated as a petition for waiver at the next scheduled Board meeting.

DONE and ORDERED this 26TH day of February, 2010.



Florida Housing Finance Corporation

By: 
Chairperson

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.